guilty on a similar state of facts. A strong dissenting opinion in the instant case contends for the application of the rule in *Bonds* v. *State, supra.* The Judge says, "If it once be admitted that one may act as agent for a purchaser in buying liquor, he having no interest whatever and receiving no benefit from the owner of the goods, it cannot be that his act is unlawful because he delivers it to the purchaser at any specific place." This view is supported in *People* v. *Journeau,* 147 Mich. 520, 111 N. W. 95, where the court held it a question for the jury whether a restaurant keeper who obtained liquor at a nearby saloon with money given her by a customer, receiving no profit from the transaction, was guilty of conduct indicative of intent to evade the prohibitory statute.

JUDGMENT—COLLATERAL ATTACK—DEFECTIVE AFFIDAVIT.—X obtained a void tax-deed to lands belonging to Y, and later obtained a decree quieting title in himself in said lands. In the suit to quiet title, service on Y (a non-resident) was made by publication, but the affidavit filed for the purpose of obtaining the court's order for substituted service was defective. In Y's suit to remove the cloud on its title made by X's decree, *held,* that the defect in the affidavit upon which such publication was based is jurisdictional and renders the judgment subject to collateral attack. *Empire Ranch & Cattle Co.* v. *Coldren* (Colo. 1911) 117 Pac. 1005.

The statute under which the affidavit was filed, MILLS ANNOTATED CODE, § 41, provides, "The plaintiff or one of the plaintiffs may file in the office of the proper clerk an affidavit stating that the defendant resides out of the State, or has departed from the State, or concealed himself to avoid service of process, and giving his post office address if known to the affiant, whereupon the order of publication shall be made." There are similar statutes providing for service by publication in nearly every jurisdiction, and the decisions under them are in hopeless conflict. VANFLEET, COLLATERAL ATTACK, §§ 330-340. Among the cases holding that a defect in the affidavit is not jurisdictional, and that the judgment is therefore not subject to collateral attack, are: *Cooper* v. *Reynolds,* 10 Wall. 308; *Matthews* v. *Densmore,* 109 U. S. 216; *Burnett* v. *McCluey,* 92 Mo. 230; *Russell* v. *Work,* 35 N. J. L. 316; *Clay* v. *Bilby,* 72 Ark. 101, 78 S. W. 749; *Scott* v. *Kirschbaum,* 47 Neb. 331, 66 N. W. 443; *Shea* v. *Johnson,* 101 Cal. 455 (Reported as *Shea* v. *Robinson,* 35 Pac. 1023); *Morris* v. *Robbins,* 83 Kan. 335, 111 Pac. 470. In all, decisions in twenty-one courts have been found supporting the rule that such defects are not jurisdictional. Decisions have been found in nine courts supporting the rule as given in the present case. The leading case on this side of the controversy is *Greenvault* v. *Farmers and Mechanics' Bank,* 2 Doug. 498. See also *Heard* v. *National Bank,* 114 Ga. 291, 40 S. E. 266; and *Lutkens* v. *Young* (Wash. 1911) 115 Pac. 1038. In commenting on this question Mr. VAN FLEET says, "No court has ever yet assigned any reasons why a failure to comply with the letter of the statute on a preliminary matter that cannot possibly affect the rights of the defendant, should make the proceeding void, and none occurs to me." VANFLEET, COLLATERAL ATTACK, p. 312. The real reason for decisions holding these defects judisdictional is that in the particu-

lar case an unjust judgment has been given. A man has lost property for a claim which later turns out to be unfounded, and, to enable him to recover his property, a collateral attack has been sustained without any very cogent reason. On the other side the reasons against holding mere defects jurisdictional are: departures rarely prejudice, and in such cases the party is sufficiently protected by the right to object at once, and if ruled against on his objection he may appeal; holding departures jurisdictional offers an inducement to the opposite party not to defend on the merits, but to rely on defeating the judgment collaterally on technical grounds; a judgment sustaining the proceeding is itself an adjudication that the form is sufficient, and therefore the question is not open for debate; decisions of this kind tend to hinder execution sales by destroying confidence in the title to the property sold. Because the statute provides that a thing must be done in a certain manner, it does not follow that if done otherwise the proceeding is void. A better construction is that the party benefited by having it done so, shall have a right to insist upon it, or be sustained in an appeal or motion to vacate if it is not done. But if he submits he should be bound.

MARRIAGE—ANNULMENT—AGE OF CONSENT.—Petitioner was married to defendant when he was seventeen years and ten months old. One month later he brought this action seeking an annulment of the marriage. The age of consent having been fixed by statute at sixteen years in females and eighteen years in males, the legislature, in 1907, passed a divorce act, among the provisions of which was the following: "Decrees of nullity of marriage may be rendered in all cases * * * VI.—At the suit of a husband when he was under eighteen years of age at the time of the marriage unless it has been confirmed by him after arriving at such age." P. L. 1907, p. 74. *Held,* that the petitioner could not disaffirm the marriage until after he had reached the age of eighteen. *Palmer* v. *Palmer* (N. J. Eq. 1911) 80 Atl. 486.

In arriving at the conclusion which he has announced as the decision of the court in this case, HOWELL, V. C., has studiously followed the common law doctrine on the point, contrary to two *dicta* of the same court and to the only American decision on the point. He has justified his view on the ground that the statute in raising the ages of consent from twelve and fourteen years, has in no other way changed the common law rule. Says COMYNS in his DIGEST OF THE COMMON LAW, Vol. 2, p. 199: "A disagreement to the marriage before the age of consent is of no force." On the point he cites 1 Rol. 340, L. 50. SIMPSON, INFANTS, 83, announces practically the same view, citing COKE ON LITTLETON, § 105. This court discards as not in point, two New Jersey cases containing *dicta* exactly opposed to the view which the court now takes. In *Titsworth* v. *Titsworth,* 78 N. J. Eq. 47, 78 Atl. 687, in which the issue was on the effect of such an annulment on the legitimacy of children born previous to annulment, the court said: "It will be optional with the husband alone to affirm or disaffirm the marriage when he shall reach the age of eighteen or at any time before." In *Williams* v. *Brokaw,* 74 N. J. Eq. 561, 70 Atl. 665, the issue was on the retroactive effect of the statute and the court stated incidentally that hereafter an infant might annul at will. The